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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,744	12/12/2003	Stephen E. Novak	14135US02	9534

23446 7590 05/17/2005

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EXAMINER

GREEN, ANTHONY J

ART UNIT	PAPER NUMBER
1755	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,744

Applicant(s)

NOVAK, STEPHEN E.

Examiner

Anthony J. Green

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-13, 15-19, 21, 23 and 26-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 7, 8, 10-13, 15, 21, 23, 26-31 and 35 is/are rejected.
- 7) ☒ Claim(s) 9, 16-19, 32-34 and 36 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment submitted on 29 March 2005. Currently claims 7-13, 15-19, 21, 23 and 26-36 are pending.

Claim Objections

2. Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form.

The range of 30 to 55wt% is outside the range of 30 to 45 wt% which is found in claim 7 (the claim from which this claim ultimately depends).

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 12, 23, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Specification No. 57-159890A.

The reference teaches powdery coal which is treated with an aqueous nitrate solution. The nitrate solution is potassium or sodium nitrate.

The instant claims are met by the reference. While the reference does not state that the nitrate is an antifreeze or that the treatment of the coal therewith prevents freezing it is the position of the examiner that the treatment of the coal with the nitrate would prevent freezing since the composition is the same. It is well settled that when claimed composition appears to be substantially the same as a composition disclosed in the prior art, the burden is properly upon the applicant to prove by way of tangible evidence that the prior art composition does not necessarily possess characteristics attributed to the CLAIMED composition. In re Spada 911 F.2d 705, 175 USPQ2d 1655 (Fed Circ. 1990).

5. Claims 12-13, 21, 23, and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derwent Abstract No. 1976-84468X (abstract of Soviet Union Patent Specification No. 502077A).

The reference teaches the use of a composition comprising sodium nitrate and sodium nitrite to accelerate ice melting from roads, airfields etc.

The instant claims are obvious over the reference. While the reference does not recite the use of the composition to treat coal or aggregates it does teach its use for roads, airfields, and crops and accordingly it would have been obvious to utilize the composition to treat any surface in need of deicing absent evidence showing otherwise. The amount recited in claim 13 is encompassed by the amount recited in the reference. As for claims 27-29, it would have been obvious to treat the material with the antifreeze composition whenever it was needed or desired absent evidence to the contrary.

6. Claims 12, 21, 23, 26-29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (US Patent No. 6,569,348).

The reference teaches the use of potassium formation in combination with a corrosion inhibitor to treat coal and other piled materials to inhibit freezing. Column 4, lines 15+, teach that the corrosion inhibitor may be selected from triethanolamine, and alkali metal and less preferably alkaline earth metal metaphosphates, nitrates etc.

The instant claims are obvious over the reference as the reference suggests the use of a composition comprising an alkali metal nitrate to treat coal to prevent freezing. As for when the coal is contacted it would have been obvious to treat the material with the antifreeze composition whenever it was needed or desired absent evidence to the contrary. Note that the reference treats the coal in piles and also recites the treatment in a railroad car (column 4, lines 10+).

7. Claims 15 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Specification No. 3-281599.

The reference teaches the treatment of coal with a compound containing an aromatic ring bonded with plural sulfone groups and a substance containing or generating plural cations. The substance containing or generating plural cations is a chloride, nitrate etc. of calcium, magnesium, zinc etc.

The instant claims are met by the reference. While the reference does not state that the composition is an antifreeze or that the treatment of the coal therewith prevents

freezing it is the position of the examiner that the treatment of the coal with the composition would prevent freezing since the composition is the same (i.e. it suggests that the composition may contain calcium or magnesium nitrate). It is well settled that when claimed composition appears to be substantially the same as a composition disclosed in the prior art, the burden is properly upon the applicant to prove by way of tangible evidence that the prior art composition does not necessarily possess characteristics attributed to the CLAIMED composition. In re Spada 911 F.2d 705, 175 USPQ2d 1655 (Fed Circ. 1990).

8. Claims 7-8, 10-11 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over RU2130958.

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The reference teaches, in the examples, an anti-icing agent comprising calcium nitrate, urea, magnesium nitrate etc.

The instant claims are obvious over the reference. While the reference does not state that the composition is used to treat aggregates such as coal, it does teach its use on ice and snow covered surfaces. Accordingly one of ordinary skill in the art would have found it obvious to utilize the composition on any surface while is in need of deicing, such as an aggregate, absent evidence to the contrary.

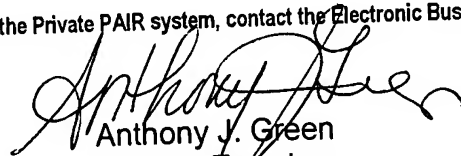
Allowable Subject Matter

9. Claims 9, 16-19, 32-34 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anthony J. Green
Primary Examiner
Art Unit 1755

ajg
May 16, 2005